

SPECIAL CIVIL APPLICATION No 6652 of 1998

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

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- MR SN SOPARKAR for Petitioner
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and

MR.JUSTICE A.R.DAVE

Date of decision: 11/11/98

ORAL JUDGEMENT (per A.R. Dave, J.)

The grievance which the petitioner company has ventilated in the present petition is with regard to not granting of a certificate under the provisions of Sec. 68(2) of the Finance Act, 1997 in respect of particulars of the voluntarily disclosed income and the amount of income tax paid in respect thereof by the petitioner-assessee.

2. The facts in brief giving rise to the present petition are as under:-

3. The petitioner had made a declaration on 30.12.97 to the effect that it was having an undisclosed income which it wanted to disclose under a scheme known as Voluntary Disclosure of Income Scheme of 1997 (VDIS). As per the provisions of sec. 67 of the Finance Act, 1997, the petitioner had to make payment of tax payable on the amount of income disclosed within a period of 3 months from the date of filing of the declaration. The case of the petitioner is that though the tax payable under the said scheme was paid on 30.3.98 and the petitioner company was entitled to a certificate under the provisions of sec. 68(2) of the Finance Act, 1997 from the respondent, the petitioner company was not granted the certificate.

4. In the above-referred circumstances, the petitioner has been constrained to approach this court with a prayer that the respondent be directed to grant a certificate under the provisions of sec. 68(2) of the Finance Act, 1997.

5. Learned Advocate appearing for the petitioner has submitted that the respondent has not issued the certificate on the ground that the tax was paid on the 91st day of the filing of the declaration. It has been submitted by him that the declaration was filed on 30.12.97 and the tax was paid on 30.3.98. It has been submitted by the learned advocate that the tax has been duly paid within a period of 3 months as provided under sec. 67(1) of the Act and therefore the reason given by the respondent that the amount was paid on 91st day is absolutely irrelevant.

6. The learned advocate has relied upon Circular No. 755 issued by the CBDT dated 25.7.97 (published in 226 ITR (Statutes) at page 33) wherein at answer to question No. 48, the aspect with regard to the period within which the tax is to be paid has been explained. Question No. 48 and its answer referred to in the said circular are reproduced hereinbelow.

"Question No. 48: If disclosure is made on December 31, 1997, would the declaration be held to be valid if total tax payment is made by March 31, 1998?

Answer: Yes."

7. The learned advocate has submitted that if we compare the illustration given hereinabove by the CBDT in the circular referred to hereinabove with the case of the petitioner, it is very clear that the petitioner ought to have been issued a certificate under the provisions of sec. 68(2) of the Act.

8. On the other hand, the learned advocate appearing for the respondent department has submitted that the petitioner is not entitled to certificate under the provisions of sec. 68(2) of the Act for the reason that the petitioner had not deposited the amount of tax within 90 days but the tax was paid on the 91st day as stated in para 2 of the affidavit-in-reply filed by the respondent. He has also relied upon a circular issued by the CBDT dated 3.9.98 and more particularly clauses II & IV of the said circular and has submitted that the petitioner ought to have deposited the amount of tax within 90 days and the cheque deposited by the petitioner ought to have been encashed within 90 days from the date of filing of the declaration. It has been submitted by the learned advocate appearing for the respondent that the cheque was encashed on 3.4.98 and therefore the payment was not made as per the provisions of the said circular within 90 days from 30.12.97, that is the day on which the declaration was filed by the petitioner and therefore the petitioner was rightly not given a certificate under sec. 68(2) of the Finance Act, 1997.

9. We have heard the learned advocates and have also perused circulars referred to hereinabove. Upon perusal of the record, it is not in dispute that the declaration was filed by the petitioner on 30.12.97 and the cheque was delivered by the petitioner on 30.3.98. It is also

not in dispute that payment by cheque is an accepted mode of payment.

10. It is very clear from the language of sec. 67(1) of the Act that the declarant has to pay the tax within 3 months from the date of filing of the declaration. As the section itself is very clear that the declarant has to make payment of tax within 3 months, we fail to understand as to how the department can insist that the period should be counted in days and not by months and urge that tax be paid within 90 days. Any circular making any provision contrary to the provision of sec. 67(1) of the Act cannot hold the field and therefore we do not agree with the submission of the learned advocate appearing for the respondent that the amount of tax ought to have been paid within 90 days. Circular No. 755 issued by the CBDT and referred to hereinabove, which is clarificatory in nature, elucidates the position. Looking to the said illustration, one cannot say that the petitioner assessee has not made payment of tax within the period prescribed. In the circumstances, we are of the view that the amount of tax was required to be paid within 3 months from the date of the declaration and therefore the respondent cannot insist upon payment of tax within 90 days as submitted by the learned advocate for the respondent. We may also observe that it would also not be proper on the part of the respondent to act in contravention of the illustration given in the circular dated 25.7.97 issued by the CBDT which clarifies the legal position by giving an illustration so as to enable the concerned persons to take an appropriate action in pursuance of the provisions of sec. 67(1) of the Finance Act, 1997.

11. Submission made by the learned advocate for the respondent that the cheque ought to have been encashed within 90 days is also not well-founded. What is relevant here is payment and not encashment of the cheque. It is a settled legal position that in case of payment by cheque, the payment is deemed to have been made on the date of delivery of the cheque and not on the date of encashment when the cheque is honoured. In the instant case, it is not in dispute that the cheque was honoured. Though the cheque was encashed on 3.4.98, the payment must be deemed to have been made on 30.3.98 when challan dated 30.3.98 was submitted by the petitioner to the respondent alongwith cheque. We are therefore of the view that payment of tax was made within the period prescribed. We are supported by a judgment delivered by the Hon'ble Supreme Court in the case of C.I.T. Bombay South v. Ogale Glass Works Ltd. (25 ITR 529) which lays

down law to the effect that when the cheque is not dishonoured but is encashed, the payment relates back to the date of the receipt of the cheque and in law, the date of payment would be the date of the delivery of the cheque.

12. In view of the above-referred clear position, we are of the view that the petitioner has been wrongly denied the certificate under provisions of sec. 68(2) of the Finance Act, 1997 and therefore we direct the respondent to issue necessary certificate under the provisions of sec. 68(2) of the said Act as expeditiously as possible. The petition is allowed accordingly. Rule is made absolute with no order as to costs.

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